FILE COPY

FILED
DEC 21 1934
CHARLES ELMORE CROP
CLERK

IN THE

Supreme Court of the United States

No. 546—October Term, 1934.

WILLIAM ROBERTS, as Receiver of the Manhattan Railway Company, and others,

Petitioners,

against

THE CITY OF NEW YORK, *et als.*,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI

PAUL WINDELS,
PAXTON BLAIR,
JOSEPH F. MULQUEEN, Jr.,
Counsel for the City of New York, Respondent.

PHILIP A. CARROLL,
Counsel for Robert Walton Goelet, et al., Respondents.

HERBERT H. MAASS,
Counsel for Pershing Square Building Corporation, Respondent.

WM. H. PAGE,
RICHARD M. PAGE,
JOHN G. DALTON,
Counsel for Bowman Biltmore Hotels Corporation, Bowery Savings Bank, Corn Exchange Bank and 22 other property owners within area of assessment, Respondents.

THOMAS H. BASKERVILLE,
Counsel for Manhattan Storage and Warehouse Co., Respondent.

ELWOOD THOMAS,
ALBERT S. WRIGHT,
Counsel for Cooper Union for the Advancement of Science and Art, Respondent.

December 20, 1934.

OUTLINE OF ARGUMENT.

PAGE

Statement of facts 1

Jurisdiction 2

Outline of argument 3

I. The decision of the Public Service Commission and the concurrent findings of the Courts below have eliminated from the case all questions concerning the valuation of the franchise and of the physical structure 4

II. The easements, under State law, had no independent existence, and therefore no value, apart from the franchise and the physical structure; hence they were overvalued rather than undervalued by the Court below 6

III. The adequacy of the amount awarded by the Court below, in the interest of substantial justice, for easements whose existence terminated with the railway company's franchise, raises no substantial federal question 9

Conclusion 16

Appendix 17

Table of Cases Cited.

	PAGE
Appleby v. City of Buffalo, 221 U. S. 524	15
Boston Chamber of Commerce v. City of Boston, 217 U. S. 189	8
Heard v. City of Brooklyn, 60 N. Y. 242	7, 8, 9, 12
Lynch v. New York ex rel. Pierson, 293 U. S. 52	3, 10
McGovern v. City of New York, 229 U. S. 363	14
Montgomery County v. Schuylkill Bridge Co., 110 Pa. St. 54	5
Olson v. United States, 292 U. S. 246	11
People ex rel. Jamaica Water Supply Co. v. Tax Com'rs, 196 N. Y. 39	5
People ex rel. New York & Queens Gas Co. v. McCall, 219 N. Y. 84; 245 U. S. 345	2
Story v. New York Elevated Ry. Co., 90 N. Y. 122	6

Statutes.

N. Y. Code Civ. Proc. §§ 2120 *et seq.*	2
N. Y. L. 1875, c. 606	8
N. Y. L. 1919, c. 611	1
N. Y. L. 1923, c. 635	1
U. S. Jud. Code § 237	2

Reported below:

265 N. Y. 170, 192 N. E. 188.

IN THE

Supreme Court of the United States

No. 546—October Term, 1934.

WILLIAM ROBERTS, as Receiver of the Manhattan Railway Company, and others,
Petitioners,

against

THE CITY OF NEW YORK, *et als.*,
Respondents.

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI.

Statement of Facts.

Petitioners' statement of facts is substantially correct, except for the emphasis which they put on the phrase "taking of property", such as the *taking* of the physical structure, the *taking* of the franchise and the *taking* of the easements for light, air and access. In view of this overemphasis, it is appropriate to restate some of the essential facts.

Pursuant to the provisions of L. 1919, c. 611, as amended by L. 1923, c. 635, "the Public Service Commission determined that the spur was no longer necessary or convenient for the public service and that it constituted an impediment and obstruction to the public use of the street" (R. 410, 411, 265 N. Y. 170, at p. 178).* In that proceeding, the Com-

* For the opinion of the Public Service Commission see 12 P. S. C. Rep. (1st Dist.) 58. An excerpt from this opinion will be found in the Appendix, *post*, p. 17.

mission also found that "the Third Avenue line is securing its full and fair share of the increased traffic at Forty-second Street, caused by the development of that section, and it is securing it without any assistance whatever from the spur, where traffic is actually on the decline" (Opinion of Commission, quoted in Appendix, *post*, p. 18). In addition, the Court found that the removal of the spur would actually result in a benefit to the petitioners herein (R. 414, 265 N. Y., at p. 182), and that "it was their desire to escape the maintenance and operation of the Forty-second street Spur" (R. 411, 265 N. Y., at p. 178).

This determination of the Public Service Commission, which antedated the condemnation proceedings, the Manhattan Railway Company, owner of the spur, made no effort to have reviewed, although under State law a writ, or order, of certiorari to the Appellate Division of the Supreme Court was a readily available and adequate remedy. See Code of Civil Procedure, §§ 2120 *et seq.*, the statute in force in 1921; and see *People ex rel. New York & Queens Gas Co.* v. *McCall*, 219 N. Y. 84, 89 (1916), aff'd 245 U. S. 345 (1918).

It was thus a structure already moribund (by virtue of the Public Service Commission's determination) which the City of New York proceeded to condemn.

Jurisdiction.

Petitioners invoke the jurisdiction of this Court under § 237 of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 937; U. S. Code of Laws, Tit. 28, § 344). Since this is a petition to review the decision of a state court, it must appear that the petition presents a

substantial federal question, and that the judgment of the Court below is not sustainable on a non-federal ground. *Lynch* v. *New York ex rel. Pierson*, 293 U. S. 52, 54 (1934), *post*, p. 10.

The opinion of the Court below does not indicate whether it held that petitioners were entitled to an award under the due process clause of the Fourteenth Amendment or whether, aside from the question of just compensation under the Fourteenth Amendment, the petitioners were held entitled to the award *ex aequo et bono* under the state law. In this case, as in *Lynch* v. *New York ex rel. Pierson*, *supra*, the basis of the decision is left to conjecture. Therefore, we submit, this Court is without jurisdiction.

Respondents will show, however, that petitioners have no claim of right under the Fourteenth Amendment, because, upon the facts found by the Courts below, they were awarded more than they would have been entitled to under the Fourteenth Amendment. As the Court below said (R. 413, 265 N. Y., at p. 181):

> "the decision of the court below awards the railroads fair compensation."

Outline of Argument.

I. The decision of the Public Service Commission and the concurrent findings of the Courts below have eliminated from the case all questions concerning the valuation of the franchise and of the physical structure.

II. The easements, under State law, had no independent existence, and therefore no value, apart from the franchise and the physical structure; hence they were

overvalued rather than undervalued by the Court below.

III. The adequacy of the amount awarded by the Court below, in the interest of substantial justice, for easements whose existence terminated with the railway company's franchise, raises no substantial federal question.

POINT I.

The decision of the Public Service Commission and the concurrent findings of the Courts below have eliminated from the case all questions concerning the valuation of the franchise and of the physical structure.

The franchise—the right to be in a public street—had no value; and this was the finding of fact concurrently made by both the lower State courts whose decisions were affirmed by the Court of Appeals.

The Appellate Division, on an appeal which resulted in an award of a new trial, said of this franchise (229 N. Y. App. Div. 617, at p. 621, as paraphrased in R. 414, 265 N. Y. 170, 182):

> "The franchise to build, maintain and operate the spur is of no value, since the spur can no longer be operated except at an annual loss and the taking by the city is a distinct benefit to the claimants since the Public Service Commission has determined that the spur is no longer necessary and convenient for public service."

And when the case, after a new trial and affirmance by the Appellate Division (238 N. Y. App. Div. 832) finally

reached the Court of Appeals, the latter Court, in making the decision now sought to be reviewed, said (R. 414, 265 N. Y. at p. 182):

> "• • • the finding that the Forty-second street franchise had no value should not be disturbed. • • •"

This mode of valuing a franchise by earnings is in accord with the accepted practice. *People ex rel. Jamaica Water Supply Co.* v. *Tax Com'rs*, 196 N. Y. 39, 55 (1909); *Montgomery County* v. *Schuylkill Bridge Co.*, 110 Pa. St. 54, 59 (1885). And the foregoing quotations from the opinions below are a sufficient answer to the belated and hopeless attempt of Petitioners (Brief, p. 17) to assign a positive earning power to the spur in question.

As a further consequence of the worthlessness of the franchise (and the Public Service Commission's determination, which the railway company failed to have reviewed), the Court of Appeals held (R. 414-415, 265 N. Y., at pp. 182-183):

> "The Appellate Division held that junk value was all that should be allowed; nuisance value or what the illegal structure was worth when taken down. The right to have the structure in the street was worthless if the street franchise was terminated. The structures had only a nuisance value when the right to have them in the street ended.
>
> "On the whole, a fair valuation of the property taken is the amount awarded by the Appellate Division."

It is, therefore, impossible to find any federal question arising out of the judgment below insofar as it affects either the franchise or the physical structure.

POINT II.

The easements, under State law, had no independent existence, and therefore no value, apart from the franchise and the physical structure; hence they were overvalued rather than undervalued by the Court below.

We now come to the only remaining question in the case, *i. e.*, did the Court below properly compensate the railway company for the so-called easements which, under the ruling in *Story* v. *New York Elevated Ry. Co.*, 90 N. Y. 122 (1882), it was compelled to "acquire" (in 1888-1904) from the abutting property owners as a condition precedent to the lawful operation of its elevated railway under its franchise?

It is, we may remark in passing, a little difficult to understand just how a railway company may be said to "acquire" an abutting owner's easements of light, air and access when it compensates such owner for the damages the operation of the railroad in front of his property causes him. It would seem more accurate to say that the railway company has acquired rights to impair easements; and such, in effect, was the holding below, the Court saying (R. 412, 265 N. Y., at p. 180):

> "Quite apart from the discussion of the cases, it is clear that the railroad merely exhausted the right of the abutting owners to complain because the railroad was in the street and so trespassing on their property. The railroad as such possesses a right to impair the easements by the operation of its road. If it did not have such rights it would be guilty of an injury to the inheritance."

It is important to note that, howsoever we may describe it, the acquisition was for the purpose of rendering lawful the operation of its elevated railroad and for no other purpose.

Under State law an easement, or similar *jus in re aliena*, acquired for a particular purpose generally ceases and determines, and may be said to revert to the owner of the land across which the easement has been acquired, whenever the use to which the easement was a *sine qua non* ceases.*

An express decision to this effect is *Heard* v. *City of Brooklyn*, 60 N. Y. 242 (1875). Here a railroad company had obtained from the legislature authority to appropriate lands for railroad purposes, and in exercise thereof had acquired a strip of land adjoining a certain avenue. Subsequently the defendant decided to widen the avenue, and received from the railroad a deed to so much of its right of way, stripped of the tracks, as was needed to bring the avenue to the desired width. The plaintiff, as successor in interest to the parties from whom the railroad had secured its right of way, brought ejectment; and the Court of Appeals held that the complaint stated a good cause of action. A judgment of dismissal was accordingly reversed, and a new trial ordered.

The Court pointed out (p. 246) that the railroad in exercising its statutory powers "became entitled only to the use of the land for the purpose of operating its railroad. The fee remained in the original owners, subject only to that use, and on the discontinuance of the use, the owners were entitled to resume possession of the land." This reversionary interest arises whenever (p. 247) "land has

---

* See also *post*, p. 12.

been taken for a particular use only, and that use is discontinued and abandoned."*

The logic of this decision seems unanswerable. It has stood unchallenged for nearly sixty years. *It antedated the acquirement of the easements in the case at bar.* And we know of nothing in the Federal Constitution which permits one who has acquired a piece of property, with this well-defined characteristic of evanescence, to reject the essence of his purchase and argue that he bought something entirely different.

This being the law of New York, it follows that the compensable loss of the railway company was *overestimated* rather than *underestimated* by the Courts below.

The force of the *Heard* decision was perceived by the Court below, for they said (R. 413-414, 265 N. Y., at p. 181):

> "That these easements would be worth $3,600,000 to the abutting owners if they now owned them is beside the point. What is the city taking from the railroads? That is the question."

In so analyzing the case, the Court below was merely following in the footsteps of Mr. Justice Holmes, who in speaking for this Court in *Boston Chamber of Commerce* v. *City of Boston*, 217 U. S. 189 (1910), said (p. 195):

> "And the question is what has the owner lost, not what has the taker gained."

---

* The powers of the railway company in the case at bar to acquire property are couched in language (L. 1875, c. 606, § 17) substantially similar to that used in the statute before the Court in the *Heard* case.

POINT III.

The adequacy of the amount awarded by the Court below, in the interest of substantial justice, for easements whose existence terminated with the railway company's franchise, raises no substantial federal question.

(1)

Apparently Chief Judge POUND, though conceding in his Opinion that the City's argument that the easements were not compensable at all "has some logical force" (R. 413, 265 N. Y., at p. 181), nevertheless felt, under the pressure of intuition as opposed to logic (if we may so express it without disrespect)*, that the "substantial justice" which the Court of Appeals has statutory power to administer (Civil Practice Act, § 588) required compensation in some measure to be paid. He accordingly declared (R. 413, 265 N. Y., at p. 181):

> "• • • the city should reimburse the railroads for what it cost them to acquire such easements when it terminates the right of use in perpetuity."

The learned Judge did not spell out the source of the duty behind the phrase "should reimburse". As we pointed out *ante*, p. 7, in citing *Heard* v. *City of Brooklyn*, the duty positively did not exist,—on strictly legal considerations. The railroad bought an evanescent kind of property, as it well knew. That which precipitated and completed the

* See *The Judgment Intuitive*, 14 Cornell L. Q. 274 (1929), by Hon. Joseph C. Hutcheson, Jr., one of the judges of the Circuit Court of Appeals for the Fifth Circuit.

process of evanescence was a determination of the Public Service Commission, which the railway company elected not to review but to accept.

Nevertheless Chief Judge POUND thought that *ex aequo et bono* the City should pay something. That duty might have had any one of five sources: (1) the State Constitution, (2) State statutes, (3) an implied contract, (4) general principles of equity and natural justice, or (5) the Federal Constitution.*

As recently as November 5, 1934, this Court said, in *Lynch* v. *New York ex rel. Pierson*, 293 U. S. 52, 54:

> "It is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it. • • • Where the judgment of the state court rests on two grounds, one involving a federal question and the other not, or if it does not appear upon which of two grounds the judgment was based, and the ground independent of a federal question is sufficient in itself to sustain it, this Court will not take jurisdiction. • • • "

---

* It would seem that the prevention of an unjust enrichment is what POUND, Ch. J., had in mind when he ordered that the railway company be paid for the easements. The property owners received compensation for damages to their easements of light, air and access commencing in 1877, and after 46 years their easements were restored to them in their pristine, unimpaired condition. But their enrichment is microscopic, for the impairment lasted 46 years. The abutters in that period may be said to have "earned" what was paid them.

It would seem clear, therefore, that when the Court below created this duty and adopted a device for measuring it, it imported no federal question into the case.

(2)

A few words should be addressed before closing to some specific features of the Petition for Certiorari.

The dissenting opinion of Judge LEHMAN is accorded, as it seems to us, undue prominence. The impression is apparently sought to be created that the majority categorically denied every proposition that the minority laid down. Obviously this is not so. The two opinions are contrary, not contradictory, and pursued such different courses that neither one can be said to be a refutation of the other.

Stress is laid (Brief, p. 13) on the requirement of the Court below that the City pay the railway company on the basis of the "cost" of the easements, as opposed to their value at date of taking. But the processes attending the termination of a franchise under State law (as set in motion by a determination of the Public Service Commission not sought to be reviewed by anyone aggrieved), and the evidence in the case, are such that the value at taking is less than cost. The alleged error, therefore, is an instance of *injuria sine damno*, and has in fact given the railway company more than it was entitled to.*

This disposes of the argument based on the language of *Olson* v. *United States*, 292 U. S. 246, 255 (1934) that "it is the property and not the cost of it that is safeguarded by state and federal constitutions".

---

* The cost, judicially determined by the Trial Court, in an order which was affirmed by the decision under review, was $194,942.24 (R. 319); the award was $539,117.41 (R. 340), plus ten years' interest.

In the last cited case this Court went on to say (p. 255):

> "The highest and most profitable use for which the property is adaptable and needed or likely to be needed in the reasonably near future is to be considered, not necessarily as the measure of value, but to the full extent that the prospect of demand for such use affects the market value while the property is privately held."

But no option, no range of choice, is or ever was available to the railway company. Its presence in the street was sanctioned for one purpose only, the maintenance of an elevated railroad. That right was defeasible by appropriate action, taken pursuant to law, by the Public Service Commission. The company's easements were never assignable in gross. It could not have erected stores or dwellings upon its structure, nor conveyed to anyone the right to do so. Hence the dissenting Judge erred when he attributed to the easements "the value which the owner could otherwise have obtained as the price of their sale or abandonment". (R. 422, 265 N. Y., at p. 191.)

The petitioners say (Brief, pp. 15-16):

> "This conception of the availability of these easements for use by the abutting owners and the possibility of sale thereof to them was by no means speculative, as the New York courts appear to have supposed; * * *."

We have already indicated the two answers to this contention. One is that the easements were never assignable in gross. The other is that, under the rule in *Heard* v. *City*

of Brooklyn, supra, p. 7, the easements reverted to the abutting owners, and their character as railway property vanished when the railroad ceased to operate.

The Petitioners (Brief, p. 19) challenge Chief Judge POUND's statement that the 42nd Street spur franchise had no value. Whether it was earning a profit or not is, however, more of a question of fact than of law; and if a question of law at all, it is a question of State law and is not a federal question.

The Petitioners (*ibid.*) argue that the railroad franchise "when accepted and acted upon, was an entire contract, not a collection of parts". But the essential nature of a franchise conferred by State law, its divisibility *vel non*,—these are exclusively questions of State law.

The same is true of the arguments (Brief, pp. 5-6) based on the failure to compensate for the easements in front of the intersection of Depew Place. The Courts below, on principles which the Brief itself shows were based on State law alone, held this particular easement (*a*) cost the railway nothing and (*b*) was part of the franchise to be in the street, a franchise determined by competent authority in April, 1921, to be valueless.

If, as Petitioners maintain (Brief, p. 20), it "was error to value it [the spur] as detached junked personalty", we again reply that no federal question is presented; for the spur acquired that character by virtue of the determination of the Public Service Commission, and if that determination aggrieved the railway company, its remedy was to review the determination in the Appellate Dvision of the Supreme Court, on writ or order of certiorari, pursuant to law. This it did not do.

(3)

Taking the Petition as a whole, however, and construing its equivocal portions most favorably to the Petitioners, we find therein, in the last analysis, nothing more than a question of the *quantum* of compensation. A fitting answer to the Petitioners' contentions is therefore found in *McGovern* v. *City of New York*, 229 U. S. 363 (1913), where the owner's claim that an award in condemnation was so inadequate as to violate his constitutional rights was rejected by this Court in the following pronouncement (pp. 370-371):

> "The statute requires the Commissioners to determine 'the just and equitable compensation which ought to be made'. If there has been any wrong done it is due not to the statute but to the courts having made a mistake as to evidence, or at most as to the measure of damages. But of course not every judgment by which a man gets less than he ought and in that sense is deprived of his property can come to this court. The result of a judgment in trover, at least if satisfied (*Lovejoy* v. *Murray*, 3 Wall. 1; *Miller* v. *Hyde*, 161 Massachusetts, 472), is to pass property as effectually as condemnation proceedings—yet no one would contend that a plaintiff could come here under the Constitution simply because of an honest mistake to his disadvantage in laying down the rule of damages for conversion. If the plaintiff could bring such a case to this court, one might ask why not the defendant for a mistake in the opposite direction that will deprive him of money that he is entitled to keep.
>
> "When property is taken by eminent domain it equally is recognized that there must be something more than an ordinary honest mistake of law in the proceedings for compensation before a party can

make out that the State has deprived him of his property unconstitutionally. *Backus* v. *Fort Street Union Depot Co.*, 169 U. S. 557, 575, 576. As it is put in the case most frequently cited in favor of the right to a writ of error, 'we are permitted only to inquire whether the trial court prescribed any rule for the guidance of the jury that was in absolute disregard of the company's right to just compensation'. And again the final judgment of a state court 'ought not to be held in violation of the due process of law enjoined by the Fourteenth Amendment unless by the rulings upon questions of law the company was prevented from obtaining substantially any compensation'. *Chicago, Burlington & Quincy R. R. Co.* v. *Chicago*, 166 U. S. 226, 246, 247; *Appleby* v. *Buffalo*, 221 U. S. 524, 531, 532."

In *Appleby* v. *City of Buffalo*, 221 U. S. 524 (1911), this Court (per Day, J.) said (p. 532):

"The only assignment of error which is here open for review does not show that the court below, by any ruling of law, deprived the owner of the right of compensation for his property. The alleged denial of Federal right rests upon the assertion that the damages were nominal, while the property taken was of greater value. But, as this court has heretofore held, if the State has provided adequate machinery for the ascertainment of compensation, upon notice and hearing, and the record discloses no ruling of law which prevented compensation to the owner for the property taken, there is no lack of due process."

The writ of certiorari should be denied for want of a substantial federal question.

Dated, December 20, 1934.

Respectfully submitted,

PAUL WINDELS,
PAXTON BLAIR,
JOSEPH F. MULQUEEN, Jr.,
Counsel for the City of New York, Respondent.

PHILIP A. CARROLL,
Counsel for Robert Walton Goelet, et al., Respondents.

HERBERT H. MAASS,
Counsel for Pershing Square Building Corporation, Respondent.

WM. H. PAGE,
RICHARD M. PAGE,
JOHN G. DALTON,
Counsel for Bowman Biltmore Hotels Corporation, Bowery Savings Bank, Corn Exchange Bank and 22 other property owners within area of assessment, Respondents.

THOMAS H. BASKERVILLE,
Counsel for Manhattan Storage and Warehouse Co., Respondent.

ELWOOD THOMAS,
ALBERT S. WRIGHT,
Counsel for Cooper Union for the Advancement of Science and Art, Respondent.

APPENDIX.

Excerpt from opinion of New York Public Service Commission, First District, in *Matter of Manhattan Ry. Co. (Removal of 42nd street Spur)*, 12 P. S. C. Rep. (1st Dist.) 58, at pages 68-69 (1921):

> "The defense of the Manhattan Railway Company proceeds chiefly upon two grounds:
>
> (1) That the spur will serve as a feeder to help the Third Avenue Elevated Railroad to secure part of the constantly increasing traffic in the Forty-second Street district; and (2) that in case of the cancellation of the existing lease of the Elevated Road to the Interborough Rapid Transit Company (which now operates the Elevated Road), and the resumption of operation of the Elevated Road by the Manhattan Railway Company, the latter company would lose its connection with Grand Central Terminal, and would thereby lose its share of the traffic to and from that Terminal.
>
> I do not think that either of these contentions can be sustained.
>
> In the first place, the record shows that although the Third Avenue Elevated Road is receiving direct benefit in traffic increase from the tremendous growth of the Forty-second Street District, nevertheless traffic on the spur is actually decreasing.
>
> In other words, ticket sales at Forty-second Street station of the Third Avenue line were—
>
> in 1916 2,303,728
> in 1920 3,339,140
>
> or an increase of more than a million.
>
> While, during the same period, ticket sales on the spur were—
>
> in 1916 1,537,904
> in 1920 1,524,427

During this same period, the record shows that ticket sales at other stations of the Third Avenue line (such as 14th Street and 23rd Street) were practically stationary.

The conclusion to be drawn from the above is that the Third Avenue line is securing its full and fair share of the increased traffic at Forty-second Street caused by the development of that section, and it is securing it without any assistance whatever from the spur, where traffic is actually on the decline.

In the second place, the record shows that if this spur were removed, there would be a tremendous increase in building operations extending as far east on Forty-second Street as Third Avenue; that this would result in bringing many more people to that section, many of whom would for convenience use the Third Avenue line, and would supply a profitable short haul traffic. That the constant flow of people from these buildings to the Third Avenue line would turn much additional traffic in that direction is obvious. Accordingly, even if the lease of the elevated road to the Interborough Rapid Transit Company were to be cancelled (which seems to be a remote possibility), the removal of this spur would not cut the company off from the Forty-second Street district and would not deprive the company of its share of traffic from that district, but rather would extend that district so as to embrace Third Avenue, with much resultant benefit to the Third Avenue Elevated Railroad."

(23614) Lawyers Press, Inc., 165 William Street, New York City, N. Y.